

RITES Ltd.
(A Govt. of India Enterprise)



**Compendium of Important Letters / Circulars issued by
CVC and RITES / Vigilance in the year 2007**



राइट्स लिमिटेड
(भारत सरकार का प्रतिष्ठान)
RITES Limited
(A Govt. of India Enterprise)

राइट्स भवन
RITES BHAWAN
नं० 1, सेक्टर-29, गुडगाँव 122 001 (भारत)
No. 1, Sector-29, Gurgaon-122 001 (INDIA)
दूरभाष (Tel.) : (0124) 2571666
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प्रस्तावना

राइट्स लिमिटेड के सतर्कता अनुभाग ने वर्ष 2007 के दौरान जारी किए गए सतर्कता संबंधी परिपत्रों/दिशा-निर्देशों/पद्धति सुधार परिपत्रों का संकलन किया है. इस प्रकार का संकलन सभी संबंधितों को सूचना के प्रचार के उद्देश्य से हर वर्ष तैयार किया जाता है. अनुदेशों के अनुसार निर्विघ्न कार्य करने से एक अच्छा और सकारात्मक कार्य- वातावरण बनता है. मेरा अनुरोध है कि इन अनुदेशों का ध्यानपूर्वक अवलोकन करें और अपनाएं.

(विनय अग्रवाल)
प्रबंध निदेशक



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PREFACE

The Vigilance section of RITES Ltd. has compiled Vigilance related circulars/guidelines/system improvement circulars, issued during the year 2007. This kind of compilation is being done every year for the purpose of disseminating information to all concerned. Smooth functioning in accordance with the instructions generates a conducive and positive work environment. I would request that these instructions may be carefully perused and adopted.

(V. K. Agarwal)
Managing Director.

CONTENTS

SECTION 1. Letters / Circulars received from Central Vigilance Commission

S. No.	Subject	Letter No. & Date
1.1	Investigation of complaints by the CVOs - seizure of records reg- Finalizing the investigation within the stipulated three months' time-limit.	No.007/VGL/013 dated 23.02.2007
1.2	Tendering process - negotiations with L- I - No post-tender negotiations with L-1, except in certain exceptional situations. i.e. procurement of proprietary items, suspicion of a cartel formation, negotiations would be permitted with L-1 bidder(s) for the supply of a bare minimum quantity. In case L-1 backs-out, there should be a re-tender.	No.005/CRD/012 dated 03.03.2007
1.3	Mobilisation Advance: - Mobilisation advance at the level of Board with concurrence of Finance, interest free mobilization advance clearly stipulated in the tender document and its recovery should be time based and not linked with progress of work. Interest to be charged on delayed recoveries, BGs should also be invariably verified from the issuing bank, confidentially and independently.	No.4CC-1-CTE-2 dated 10.04.2007
1.4	Use of Product with standard specification:- Items with standard specifications only should be stipulated in the bid documents.	No.98-VGL-25 dated 14.04.2007
1.5	Improving Vigilance administration by leveraging technology:- Increasing transparency through effective use of website. : posting the details of tenders awarded on the web-sites, upload on their websites, information in respect of the rules and procedures, and to make available all the application forms on the websites in a downloadable form besides, making available the status of individual application on the organization's website.	No. 006/VGL/117 dated 18.04.2007
1.6	Constitution of Committee of Experts for scrutiny of prosecution sanctions :- Constitute a panel of experts of six eminent persons, for scrutiny of reconsideration proposals where the Commission and CBI have advised sanction for prosecution.	No. 007/VGL/010 dated 13.06.2007
1.7	Transparency in Works/ purchase/Consultancy contracts awarded on nomination basis :- In rare and exceptional cases, for instance, during natural calamities and emergencies declared by the government.	No.005/CRD/19 dated 05.07.2007
1.8	Expeditious disposal of cases involving public servants due to retire shortly :- vigilance /administrative functionaries in an organization must	No.007/VGL/052 dated 27.09.2007

	invariably keep in mind the date of superannuation of the SPS/CO while handling disciplinary cases.	
1.9	Jurisdiction of CVC over employee of PSU's :- Schedule 'A' and 'B' officers of E-8 above.	No. 006/VGL/11 dated 18.10.2007
1.10	Corporate Governance and Ethics - Challenges and Imperatives a note by Smt. Ranjana Kumar Vigilance Commissioner.	No. 007/VGL/070 dated 29.10.2007
1.11	Criteria to be followed while examining the lapses of authorities exercising quasi-judicial powers in accordance with the criteria laid down by the Hon'ble Supreme Court. :- Uniform approach in examining disciplinary proceedings.	No. 07/MISC/Legal/ 04(Pt.) dated 01.11.2007
1.12	Reporting of cases in the monthly report of the CVOs, where sanction for prosecution is to be granted by the competent authority.	No.005/VGL/031 dated 23.11.2007
1.13	Adoption of Integrity Pact in major Government procurement Activities :- The pact essentially envisages an agreement between the prospective vendors/bidders and the buyer committing the persons/officials of both the parties, not to exercise any corrupt influence on any aspect of the contract	No.007/VGL/033 dated 04.12.2007
1.14	Adoption of Integrity Pact in major Government procurement Activities- Forward the panel of names of eminent persons for appointment and consideration as IEMs directly to the CVC for approval.	No.007/VGL/033 dated 28.12.2007
1.15	Amendment to CDA Rules of PSUs to enable imposition of penalty on Public Sector Employees after their retirement:- PSUs to make a provision in their CDA Rules to allow continuation of departmental proceedings after retirement of an employee	No.007/VGL/074 dated 28.12.2007

CVC circulars are also available at CVC web site www.cvc.nic.in

SECTION-I

**Letters / Circulars received from Central Vigilance
Commission**

No.007/VGL/013
Government of India
Central Vigilance Commission

Satarkta Bhawan, Block 'A',
GPO Complex, INA,
New Delhi- 110 023
Dated 23rd February 2007

Circular No: 3/2/07

Sub: Investigation of complaints by the CVOs - seizure of records reg.

It has come to the Commission's notice that when a complaint is received by the CVO either from the Commission or from other sources, the time taken by the department for investigating the complaint is unduly long and beyond the time-limit of three months stipulated by the Commission vide its circular No.000/VGL/18 dated 23.5.2000. The main reason cited by the CVOs for the delay is nonavailability of records/documents pertaining to that particular complaint/allegation. The Commission vide Para 4.4 (a) of Vigilance Manual, 6th Edition has already issued guidelines stating that "if the allegations contain information which can be verified from any document or file or any other departmental records, the investigating /vigilance officer should, without loss of time, secure such records, etc., for personal inspection. If any of the papers examined is found to contain evidence supporting the allegations, such papers should be taken over by him for retention in his personal custody to guard against the possibility of available evidence being tampered with".

2. The Commission observes that these guidelines are not being adhered to and would therefore reiterate its aforementioned guidelines and direct the CVOs to ensure that all relevant ant records/documents/files etc. are taken into personal custody by the investigating officer immediately on receipt of the reference/complaint for processing the allegations, and finalizing the investigation within the stipulated three months' time-limit prescribed by the Commission.
3. The Commission, exercising its authority as contained in para 8(1)(c&d) and para 11 of CVC Act, 2003, also conducts direct inquiry into complaints through Direct Inquiry Officers as nominated by the Commission. It is directed that as soon as a direct inquiry is ordered by the Commission, the CVOs should immediately seize the relevant and records pertaining to the case and produce them before the Direct Inquiry Officers (DIOs) without any delay.
4. The above instructions may be noted for strict compliance.

--Sd/--
(Vineet Mathur)
Deputy Secretary

All Chief Vigilance Officers

No.005/CRD/012
Government of India
Central Vigilance Commission

Satarkta Bhawan, Bloc 'A',
PO Complex, INA,
New Delhi- 110 023
Dated 3rd March, 2007

Circular No: 4/3/07

Sub: - Tendering process - negotiations with L- 1.

Reference is invited to the Commission's circulars of even number, dated 25.10.2005 and 3.10.2006, on the above cited subject. In supersession of the instructions contained therein, the following consolidated instructions are issued with immediate effect.

- (i) As post tender negotiations could often be a source of corruption, it is directed that there should be no post-tender negotiations with L-1, except in certain exceptional situations. Such exceptional situations would include, procurement of proprietary items, items with limited sources of supply and items where there is suspicion of a cartel formation. The justification and details of such negotiations should be duly recorded and documented without any loss of time.
- (ii) In cases where a decision is taken to go for re-tendering due to the unreasonableness of the quoted rates, but the requirements are urgent and a re-tender for the entire requirement would delay the availability of the item, thus jeopardizing the essential operations, maintenance and safety, negotiations would be permitted with L-1 bidder(s) for the supply of a bare minimum quantity. The balance quantity should, however, be procured expeditiously through a re-tender, following the normal tendering process.
- (iii) Negotiations should not be allowed to be misused as a tool for bargaining with L-1 with dubious intentions or lead to delays in decision-making. Convincing reasons must be recorded by the authority recommending negotiations. Competent authority should exercise due diligence while accepting a tender or ordering negotiations or calling for a re-tender and a definite timeframe should be indicated so that the time taken for according requisite approvals for the entire process of award of tenders does not exceed one month from the date of submission of recommendations. In cases where the proposal is to be approved at higher levels, a maximum of 15 days should be assigned for clearance at each level. In no case should the overall timeframe exceed the validity period of the tender and it should be ensured that tenders are invariably finalised within their validity period.
- (iv) As regards the splitting of quantities, some organisations have expressed apprehension that pre-disclosing the distribution of quantities in the bid

document may not be feasible, as the capacity of the L-1 firm may not be known in advance. It may be stated that if, after due processing, it is discovered that the quantity to be ordered is far more than what L-1 alone is capable of supplying and there was no prior decision to split the quantities, then the quantity being finally ordered should be distributed among the other bidders in a manner that is fair, transparent and equitable. It is essentially in cases where the organisations decide in advance to have more than one source of supply (due to critical or vital nature of the item) that the Commission insists on pre-disclosing the ratio of splitting the supply in the tender itself. This must be followed scrupulously.

- (v) Counter-offers to L-1, in order to arrive at an acceptable price, shall amount to negotiations. However, any counter-offer thereafter to L-2, L-3, etc., (at the rates accepted by L-1) in case of splitting of quantities, as pre-disclosed in the tender, shall not be deemed to be a negotiation.
- 2. It is reiterated that in case L-1 backs-out, there should be a re-tender.
- 3. These instructions issue with the approval of the Commission and may please be noted for immediate compliance.

--Sd/--
(Vineet Mathur)
Deputy Secretary

All Chief Vigilance Officers

No.4CC-1-CTE-2
Government of India
Central Vigilance Commission

Satarkta Bhawan, Block-A,
4th Floor, GPO Complex,
INA, NEW DELHI –110 023
10th April, 2007

OFFICE MEMORANDUM/CIRCULAR No.10/04/07

Sub: Mobilisation Advance

Commission has reviewed the existing guidelines on 'Mobilisation Advance' issued vide OM No.UU/POL/18/dated 08.12.97 and OM No.4CC-1-CTE-2, dated 08.06.2004.

The following guidelines are issued in supercession of earlier guidelines issued by the Commission on 'Mobilisation Advance'.

1. Provision of mobilisation advance should essentially be need based. Decision to provide such advance should rest at the level of Board (with concurrence of Finance) in the organization.
2. Though the Commission does not encourage interest free mobilization advance, but, if the Management feels its necessity in specific cases, then it should be clearly stipulated in the tender document and its recovery should be time based and not linked with progress of work. This would ensure that even if the contractor is not executing the work or executing it at a slow pace, the recovery of advance could commence and scope for misuse of such advance could be reduced.
3. Part 'Bank Guarantee' (BGs) against the mobilisation advance should be taken in as many numbers as the proposed recovery instalments and should be equivalent to the amount of each instalment. This would ensure that at any point of time even if the Contractor's money on account of work done is not available with the organization, recovery of such advance could be ensured by encashing the BG for the work supposed to be completed within a particular period of time.
4. There should be a clear stipulation of interest to be charged on delayed recoveries either due to the late submission of bill by the contractor or any other reason besides the reason giving rise to the encashment of BG, as stated above.
5. The amount of mobilization advance, interest to be charged, if any, its recovery schedule and any other relevant detail should be explicitly stipulated in the tendered document upfront.

6. Relevant format for BG should be provided in the tender document, which should be enforced strictly and authenticity of such BGs should also be invariably verified from the issuing bank, confidentiality and independently by the organization.
7. In case of 'Machinery and Equipment Advance', insurance and hypothecation to the employer should be ensured.
8. Utilisation certificate from the contractor for the mobilization advance should be obtained. Preferably mobilization advance should be given in instalments and subsequent instalments should be released after getting satisfactory utilisation certificate from the contractor for the earlier instalment.

--Sd/--
(P.VARMA)
Chief Technical Examiner

Copy to:

All CVOs: Ministries/Departments/PSUs/Banks/Uts

No.98-VGL-25
Government of India
Central Vigilance Commission
(CTEO)

Satarkta Bhawan, Block-A
INA, GPO Complex,
New Delhi-110023

OFFICE MEMORANDUM

Circular No 14/4/07

Sub: Use of Products with standard specification.

A case has come to the notice of the Commission that the user department one organization requisitioned an item of non-standard size. Requisitioning of item with non-standard size resulted in issue of `Non- availability certificate' by the stores keeper although the same item of standard size was already available in the stock. Citing urgency, the item was procured by the user department at 10 times the cost of the standard item by inviting limited quotations.

2. In order to avoid such occurrences, it is reiterated that the items with standard specifications only should be stipulated in the bid documents. In case items with non-standard specifications are to be procured reasoning for procuring such items may be recorded and reasonability of rates must be checked before placing order.

--Sd/--dtd26.04.07
(Smt.Padmaja Varma)
Chief Technical Examiner

To

All CVOs of Ministries/Departments/PSUs/Banks/Insurance Companies/ Autonomous Organisations/Societies/

No. 006/VGL/117
Government of India
Central Vigilance Commission

Satarkta Bhawan, Block-'A'
GPO Complex, INA,
New Delhi-110023:

Dated 18th April 2007

CIRCULAR No. 13/4/07

**Subject: - Improving Vigilance administration by leveraging technology:
Increasing transparency through effective use of website.**

Please refer to Commission's Circular no. 40/11/06 dated 22/11/2006 on the aforementioned subject & also Circular No. 13/3/05 dated 16/03/2005 & Circular No. 46/7/05 dated 28/7/2005 regarding details of award of tenders/contracts publishing on Websites/Bulletin.

2. The Commission vide circulars dated 16/3/05 & 28/7/05 had directed all organizations to post on their web-sites a summary, every month, of all the contracts/purchases made above the threshold value covering at least 60% of the transactions every month. A compliance report in this regard was to be submitted to the Commission by the CVOs through their monthly report to the Commission. However, it is seen that some of the departments have neither intimated the Commission about the threshold value decided for posting the details of tenders awarded on the web sites, nor a compliance report is being sent through the monthly reports.
3. Further, vide circular dated 22/11/06, the Commission while emphasizing the need to leverage technology, as an effective tool in vigilance administration, in discharge of regulatory, enforcement and other functions had directed the organizations to upload on their websites, information in respect of the rules and procedures governing the issue of licenses/permissions etc. and to make available all the application forms on the websites in a downloadable form besides, making available the status of individual application on the organization's website. The Commission had directed the organizations to implement its guidelines in two phases. The first phase relating to the posting of all application forms on the website was to be implemented by 1/1/2007 and the second phase, by 1/4/2007. Although, the date for implementation of second phase has passed by, the departments are yet to intimate the Commission about the status of implementation of the two phases.
4. The Commission, therefore, while reiterating its aforementioned instructions directs the CVOs to convey to the Commission the following information latest by 30/4/07:-

- a) The threshold value decided by the organization for publishing on their web-site, details of award of tenders/contracts;
 - b) The extent to which the details of awarded tenders are being posted on the web-site and whether the web-sites are being updated regularly or not;
 - c) Whether first/second phase of the Commission's circular dated 22/11/06 has been implemented or not;
 - d) If not, the reasons thereof: steps being taken by the organization to ensure implementation of the Commission's circular and the exact date by which both the phases as mentioned in the Commission's circular would be fully implemented;.
5. Any failure on the part of organization to implement the directions contained in the Commissions circulars as mentioned above would be viewed seriously by the Commission.

--Sd/--
(Vineet Mathur)
Deputy Secretary

All Chief Vigilance Officers

No. 007/VGL/010
Government of India
Central Vigilance Commission

Satarkta Bhawan, Block-A
INA, GPO complex,
New Delhi-110023
Dated 13th June, 2007

Circular No. 17/5/07
Sub:- Constitution of Committee of Experts for scrutiny of prosecution sanctions.

Central Vigilance Commission, in accordance with the power conferred upon it vide section 8 (1)(f) and (h) of CVC Act, 2003, tenders advice in respect of officers coming under its jurisdiction against whom the Central Bureau of Investigation, after investigating the case, has recommended sanction for prosecution.

2. On a few occasions, where the Commission has, in agreement with the CBI's recommendations, advised sanction for prosecution against a public servant, the disciplinary authority, in disagreement with the CBI's recommendations, approaches the Commission for reconsideration of its advice.

3. In accordance with the guidelines issued by M/o Personnel, Public Grievances & Pensions (Deptt. of Personnel & Training) vide O.M. No. 399/33/2006-AVD-III dated 6/11/2006, a committee of experts is to be set-up by the Central Vigilance Commission (with experts drawn from civil services, public sector undertakings and banks) to examine such reconsideration proposals received from various ministries/departments/organizations.

4. It has, therefore, been decided to constitute a panel of experts of six eminent persons, for scrutiny of reconsideration proposals where the Commission and CBI have advised sanction for prosecution against the suspected public servants. Depending upon the nature of the case, a committee of 3 members from amongst the panel of six experts would be drawn, who shall examine the CBI recommendation and the tentative view of the Ministry/Department concerned in greater detail and, based on the experts committee's recommendation, the CVC would render appropriate advice to the competent authority within 15 days of the meeting of the committee. The three-member committee would be chaired by one of the Vigilance Commissioners in the Commission.

5. The following persons would form the panel of experts: -

1. Shri B.S. Minhas, IAS (Retd.)
2. Shri J.S. Juneja, Chairman (Retd), NSIC
3. Shri S.N. Menon, IAS (Retd) Ex-commerce Secretary
4. Shri R.C. Aggarwal, IPS (Retd. DG, ITBP)
5. Shri Himanshu Kumar, IPS (Retd DG, SSB)

6. Shri A.K. Purwar, Ex CMD, SBI

6. The tenure of panel of experts would be for a period of two years. The terms and conditions would be as indicated in the annexure.

7. The meetings of the committee would be held in Delhi. Central Vigilance Commission would provide the required secretarial services alongwith the necessary funds to meet the expenditure to be incurred regarding the meetings of the committee. The Commission would tender advice within 15 days of the meeting of the experts committee.

--Sd/--

(SUJIT BANERJEE)
SECRETARY

To,

1. Members of the Committee of Experts.
2. Shri Satyananda Mishra, Secretary, DOPT, North Block, New Delhi.
3. Shri Vijay Shanker, Director, CBI, North Block, New Delhi.
4. All Chief Vigilance Officers.

No.005/CRD/19
Government of India
Central Vigilance Commission

Sararkta Bhawan, Bloc 'A',
PO Complex, INA,
New Delhi- 110 023
Dated 5th July 2007

Office Order No.23/7/07

Subject: Transparency in Works/ purchase/Consultancy contracts awarded on nomination basis.

Reference is invited to the Commission's circular No.15/5/06 (issued vide letter No.005/CRD/19 dated 9.5.2006), wherein the need for award of contracts in a transparent and open manner has been emphasized.

2. A perusal of the queries and references pertaining to this circular, received from various organizations, indicates that several of them believe that mere post-facto approval of the Board is sufficient to award a contracts on nomination basis rather than the inevitability of the situation, as emphasized in the circular.

3. It is needless to state that tendering process or public auction is a basic requirements for the award of contract by any government agency as any other method, especially award of contract on nomination basis, would amount to a breach of Article 14 of the Constitution guaranteeing right to equality, which implies right to equality to all interested parties.

4. A relevant extract from the recent Supreme Court of India judgment in the case of Nagar Nigam, Meerut Vs A1 Faheem Meat Export Pvt. Ltd. [arising out of SLP(civil) No.10174 of 2006] is reproduced below to reinforce this point.

"The law is well-settled that contracts by the State, its corporations, instrumentalities and agencies must be normally granted through public auction/public tender by inviting tenders from eligible persons and the notifications of the public-auction or inviting tenders should be advertised in well known dailies having wide circulation in the locality with all relevant details such as date, time and place of auction, subject matter of auction, technical specifications, estimated cost, earnest money deposit, etc. The award of government contracts through public-auction/public tender is to ensure transparency in the public procurement, to maximize economy and efficiency in government procurement, to promote healthy competition among the tenderers, to provide for fair and equitable treatment of all tenderers, and to eliminate irregularities, interference and corrupt practices by the authorities concerned. This is required by Article 14 of the Constitution.

However, in rare and exceptional cases, for instance, during natural calamities and emergencies declared by the government; where the procurement is possible from a

single source only; where the supplier or contractor has exclusive rights in respect of the goods or services and no reasonable alternative or substitute exists; where the auction was held on several dates but there were no bidders or the bids offered were too low, etc., this normal rule may be departed from and such contracts may be awarded through 'private negotiations'."

(Copy of the full judgment is available on the web-site of the Hon'ble Supreme Court of India, i.e., www.supremecourtfindia.nic.in)

5. The Commission advises all CVOs to formally apprise their respective Boards/managements of the above observations as well as the full judgment of the Hon'ble Supreme Court for necessary observance. A confirmation of the action taken in this regard may be reflected in the CVO's monthly report.

6. Further, all nomination/single tender contracts be posted on the web-site ex post-facto.

--Sd/--
(Rajiv Verma)
Under Secretary

To

All Chief Vigilance Officers

No.007/VGL/052
Government of India
Central Vigilance Commission

Satarkta Bhawan, Block-A,
4th Floor, GPO Complex,
INA, NEW DELHI -110 023
Dated 27th September, 2007

OFFICE ORDER No.34/9/07

Sub: **Expeditious disposal of cases involving public servants due to retire shortly.**

The Commission had, vide its letter NO.DO/DSP/15 dated 26.02.1981 and 6.5.1981 directed expeditious completion of disciplinary action, particularly against the officials likely to retire soon. Later, vide Commission's circular No.14/3/06 Dated 13.3.2006, detailed instructions were issued on the pre-requisites for seeking first/second stage advice. In this circular a specific mention had been made about the requirement of bio-data, which inter-alia contains the date of superannuation of SPS/CO.

2. The ready availability of date of superannuation of the SPC/CO is meant to serve as a guide to the CVO/DA to handle the case at a pace that should complete the action well in time. It has, however, come to repeated notice of the Commission that the CVOs/Das often tend to lost sight of the superannuation dates, thereby creating situations which serve to the advantage of the SPS/Cos. The entire effort is rendered all the more infructuous in organizations where the Conduct Rules do not provide for continuance of disciplinary action after retirement.
3. The Commission has, therefore, emphasized once again that all vigilance/administrative functionaries in an organization must invariably keep in mind the date of superannuation of the SPS/CO while handling disciplinary cases and anyone found to have consciously ignored the fact should be held accountable for the delay that may lead to the eventual dropping of the proceedings.

All CVOs should ensure strict compliance to the above instructions.

--Sd/--

(Vineet Mathur)
Deputy Secretary

All Chief Vigilance Officers

No.006/vgl/11
Government of India
Central Vigilance Commission

Starkta Bhawan, Block - A
GPO Complex, INA,
New Delhi - 110023
Dated 18th October 2007

Office Order No.37/10/07

Subject: Jurisdiction of CVC over employees of PSUs, Insurance companies, RBI, NABARD, SIDBI, societies and other local authorities.

DOPT, in accordance with Section 8 (2) (b) of the CVC Act 2003, has notified the level of officers of PSUs, Insurance companies, RBI, NABARD, SIDBI, societies and other local authorities who would be covered under the normal advisory jurisdiction of the Commission.

A copy of the gazette of the gazette notification dated 12.09.2007 issued by DOPT on the subject cited above is enclosed. The levels specified in the DOPT's gazette notification may be kept in view while forwarding the cases to the Commission for seeking its advice.

--Sd/--
(Rajiv Verma)
Under Secretary

All Chief Vigilance Officers

MINISTRY OF PERSONNEL, PUBLIC GRIEVANCES AND PENSIONS
(Department of Personnel and Training)

New Delhi,
12th September 2007

NOTIFICATION

S.O. 1538 (e) – In exercise of the powers conferred by clause (b) of section 8 of the Central Vigilance Commission Act, 2003 (45 of 2003), the central Government hereby specifies the following level of officers mentioned in column (3) of the table below of the corporations established by or under any Central Act, the Government companies, societies and other local authorities owned or controlled by the Central Government mentioned in column (2) of the said Table for the purpose of clause (d) of sub-section (1) of section 8 of the said Act :-

TABLE

Sl. No	Name and categories of corporation/Government companies/societies and Other local authorities	Level of officers
(1)	(2)	(3)
1.	Schedule 'A' and 'B' Public Sector Undertakings	Chief Executive and Executives on the Board and other officers of E-8 above,
2.	Schedule 'C' and 'D' Public Sector on the Undertakings	Chief Executive and Executives on the Board and other officers of E-7 and above.
3.	Reserve Bank of India, NABARD and SIDBI	Officers in Grade 'D' and above
4.	General Insurance Companies	Managers and above.
5.	Life Insurance Corporations	Senior Divisional Managers and above
6.	Societies and other Local Authorities	Officers drawing salary of Rs 8700/- p.m. and above on Central Government DA pattern as on the date of the notification and as may be revised from time to time.

[No. 418/2/2004 - A.V.D.IV]
P. K. TRIPATHI, Jt Secy.

No. 007/VGL/070
Government of India
Central Vigilance Commission

Satarkta Bhawan Block-A
GPO Complex INA
New Delhi-110023
Dated: 29th October 2007

Circular No: 38/10/07

Subject:- Corporate Governance and Ethics - Challenges and Imperatives a note by Smt. Ranjana Kumar Vigilance Commissioner .

Smt. Ranjana Kumar, Vigilance Commissioner, has prepared a note on Corporate Governance an Ethics - Challenges an Imperatives" which deals with various issues relating to principles of Corporate Governance.

2. The note is available on the Commission's website i.e. <http://www.cvc.nic.in> in downloadable form. The CVOs may kindly incorporate the note/contents of the note in their organizations' vigilance journal/newsletter to be published , release on the occasion of the Vigilance Awareness Week to be observe from 12/11/2007 to 16/11/2007 for information of all employees in their organizations.

--Sd/--
(Rajiv Verma)
Under Secretary

Encl: - Note of Smt. Ranjana Kumar, Vigilance Commissioner

All Chief Vigilance Officers

Corporate Governance Ethics – Challenges Imperatives

1. A corporation is a congregation of various stakeholders namely customers employees investors vendors partners government and society. A corporation should be fair and transparent to its stakeholders in all its transactions. This has become imperative in today's globalized business world where corporations need to access global pools of capital need to attract and retain the best human capital from various parts of the world need to partner with vendors on mega collaborations and need to live in harmony with the community. Unless a corporation embraces and demonstrates ethical conduct it will not be able to succeed.

2. What is "Corporate Governance"

It is known fact that vital needs of success of any organization lingers on its ability to mobilize and utilize all kinds of resources to meet the objectives clearly set as part of the planning process. Managing well depends on internal and external factors the latter include availability cost effectiveness; technological advancement. Increasingly revelations of deterioration in quality and transparency have called for adoption of internationally accepted 'Best Practices'. The acceptance of the concept gave rise of 'Corporate Governance'. 'Corporate Governance' encompasses commitment to values and to ethical business conduct to maximize shareholders values on a sustainable basis, while ensuring fairness to all stakeholders including customers, employees, and investors, vendors, Government and society at large. Corporate Governance is the system by which companies are directed and managed. It influences how the objectives of the company a set and ahieved how risk is monitored and assessed and how performance is optimized. Sound Corporate Governance is therefore critical to enhance and retain investors' trust.

3. Corporate governance is about ethical conduct in business. Ethics is concerned with the code of values and principles that enables a person to choose between right and wrong and therefore select from alternative courses of action. Further ethical dilemmas arise from conflicting interests of the parties involved. In this regard manages make decisions based on a set of principles influenced by the values context and culture of the organization. Ethical leadership is good for business as the organization is seen to conduct its business in line with the expectations of all stakeholders. What constitutes good Corporate Governance will evolve with the changing circumstances of a company and must be tailored to meet these circumstances. There is therefore no one single model of Corporate Governance.
4. I do feel it is necessary to act the evolution of the concept for better comprehension. Economic and Commercial activities the world over grew manifold after the Bretton Woods and formation of World Bank and the International Monetary Fund. Cross border trades and exchange rate mechanisms resulted in specialization within financial market. Several layers in

the field, International commerce and settlements grew manifold giving rise to standards and benchmarks. ISO 9000 and International best accounting practices the culmination of the experience of the stakeholders in different fields of economics and commerce, the policymakers included.

5. As I see it, Corporate Governance is nothing but the moral or ethical value framework under which corporate decisions are taken. It is quite possible that in the effort at arriving the best possible financial results of business results there could be attempts at doing things which are merging on the illegal even illegal. There is also the possibility of grey areas where an act is not illegal but considered unethical. These raise moral issues.
6. In fact the very definition of corporate governance stems from its organic link with the entire gamut of activities having a direct or indirect influence on the financial health of corporate entities. The Cadbury Report (1992) simply describes Corporate Governance as 'the system by which companies are directed and controlled'. So far as corporate governance is concerned, it is financial integrity that assumes tremendous importance. This would mean that the directors and all concerned should be open and straight/for the right about issues where there is conflict of interest involved in financial decision making. When it comes to even the purchase/procurement procedures, there is need for greater transparency.
7. The Corporate system and diverse ownership did contribute in a substantial measure to prosperity, employment potential and living standards of the subjects across the globe. Notwithstanding the contributions, the failures too caused concerns among the regulators. Existing laws, rules and controls did not adequately address the issues related to the failures caused by deficient or intentional fraudulent managements. In USA, the Sarbanes-Oxley Act 2002 was passed to address the issues associated with corporate failures achieve quality governance and restoring 'investor' confidence.
8. The Securities and Exchange Commission of,USA initiateds action against multinational accounting firms for failure to detect blatant violation of accounting standards, and penalties running to several million dollars we recovered, from certain multinational consultancy firms.
9. Why Corporate Governance?
 - a) The liberalization and de-regulation world over gave greater freedom in management. This would imply greater responsibilities.
 - b) The players in the field are many. Competition brings in its wake weakness in standards of reporting and accountability.
 - c) Market conditions are increasingly becoming complex in the light of global developments like WTO, removal of barriers/ education in duties.

- d) The failure of corporate due to lack of transparency and disclosures and instances of falsification of accounts/embezzlement and the effect of such undesirable practices in other companies.
10. It is the increasing role of foreign institutional investors emerging economies that has made the concept of corporate governance a relevant issue today. In fact the expression was hardly in the public domain. In the increasingly close interaction of the economies of different countries lies the process of globalisation. This involves the rapid migration of four elements across national borders. These are (i) Physical capital in terms of plant and machinery; (ii) Financial capital; (iii) Technology; and (iv) Labour.
11. The increasing concern of the foreign investors is that the enterprise in which they investor should not only be effectively managed but should also observe the principles of corporate governance. In other words, the enterprises will not do anything illegal or unethical. This need for re-assurance is felt by the FIIs due to the fact that there have been cases of dramatic collapse of enterprises which were apparently doing well but which were not observing the principles of corporate governance.
12. In India corruption is an all embracing phenomenon. In this, if the respective players in the field were to adopt healthy principles of good corporate governance and avoid corruption in their transactions, India could really take a step forward to becoming a less corrupt country and improving its rank in the Corruption Perception Index listed by the Transparency International.
13. Studies in India and abroad show that markets and investors take notice of well managed companies respond positively to them and reward such companies with higher valuations. A common feature is that they have systems in place, which allow sufficient freedom to Board and Management to take decisions towards progress and to innovate, while remaining within the framework of effective accountability. In other words they have a good system of corporate governance. Strong corporate governance is indispensable to resilient and vibrant capital markets and is an important instrument of investor protection.
14. Securities and Exchange Board of India constituted a Committee on Corporate Governance under the Chairmanship of Mr Kumar Mangalam Birla. The committee observed that there are companies, which have set high standards of governance while there are many more whose practices are matters of concern. There is increasing concern about standards of financial reporting and accountability especially after losses are suffered by investors and leaders in the recent past, which could have been avoided with better and more transparent reporting practices. Companies raise capital from market and investors suffered due to unscrupulous managements that performed much worse than past reported figures. Bad governance was also exemplified by allotment of promoters' share at preferential prices disproportionate to market value, affecting minority holders' interests. Many corporate did not pay heed to investors' grievances. While there we are enough rules and regulations to take

care of grievances, yet the inadequate implementation and the absence of severe penalty, left much to be desired.

15. The Kumar Mangalam Committee made mandatory and non-mandatory recommendations. Based on the recommendations of this Committee, a new clause 49 was incorporated in the Stock Exchange Listing Agreements ("Listing Agreements"). The important aspects, in brief, are:
 - (i) Board of Directors are accountable to shareholders.
 - (ii) Board controls are laid down code of conduct and accountable to shareholders for creating, protecting and enhancing wealth and resources of the Company reporting promptly in transparent manner while not involving in day to day management.
 - (iii) Classification of non-executive directors into those who are independent and those who are not.
 - (iv) Independent directors not to have material or pecuniary relations with the Company/subsidiaries and if had, to disclose in Annual Report.
 - (v) Laying emphasis on caliber of non-executive directors especially independent directors.
 - (vi) Sufficient compensation package to attract talented non-executive directors.
 - (vii) Optimum combination of not less than 50% of non-executive directors and of which companies with non-executive Chairman to have at least one third of independent directors and under executive Chairman at least one half of independent directors.
 - (viii) Nominee directors to be treated on par with any other director.
 - (ix) Qualified independent Audit committee to be setup with minimum of three all being non-executive directors with one having financial and accounting knowledge.
 - (x) Corporate governance report to be part of Annual Report and disclosure on directors' remuneration etc., to be included.
16. Naresh Chandra Committee recommendations relate to the Auditor –Company relationship and the role of Auditors. Report of the SEBI Committee on Corporate Governance recommended that the mandatory recommendations on matters of disclosure of contingent liabilities, CEO/CFO Certification, definition of Independent Director, independence of Audit Committee and independent director exemptions in the report of the Naresh Chandra Committee, relating to corporate governance, be implemented by SEBI.
17. Narayana Murthy Committee recommendations include role of Audit Committee, Related party transactions, Risk management, compensation to Non-Executive Directors, Whistle Blower Policy, Affairs of Subsidiary Companies, Analyst Reports and other non-mandatory recommendations.

18. When it comes to corporate governance, I think we will have to look at the hardware as well as the software aspect. So far as the software aspect is concerned, I would suggest, it depends on the values cherished and practiced by the members of the Board of Directors as well as the management of any organization. It is always possible to mouth very high principles but act in a very lowly manner. If there is going to be divergence between practice and precept, then we are not going to achieve good corporate governance. This is the first point to be realised.
19. The most important aspect for observing corporate governance is the top management, particularly the board of directors and the senior level management of an enterprise walking their talk. It is by walking their talk that the top management can earn credibility. This also has a direct bearing on the morale of an organisation.
20. When it comes to the hardware aspect of corporate governance, we go into the issue of a code, which becomes a reference point for behavior. But the sad fact in our country is that even though there is a lot of talk about corporate governance when it comes to reality nothing much happens.
21. With the SEBI trying to bring some discipline in the stock market especially in terms of greater transparency and disclosure norms corporate governance in the Indian context at least seems to focus primarily and rightly on the issue of transparency. It is lack of transparency that leads to corrupt or illegal behavior. If corporate governance is concerned with better ethics and principles it is only natural that the focus should be on transparency. But how is this transparency to be achieved? One method of course is the code. Another would be the regulatory authorities like SEBI, RBI etc. laying down guidelines so that a certain degree of transparency is automatically ensured. Another legal approach to achieve better corporate governance may be to look at the whole issue of bringing the corporate sector under the discipline of debt and equity. Perhaps amendment of the Companies Act and bringing in this discipline will also help in automatically ensuring better ethics and corporate governance.
22. Perhaps the most important challenge we face towards better corporate governance is the mindset of the people and the organizational culture. This change will have to come from within. The government or the regulatory agencies at best can provide certain environment, which will be conducive for such a mindset taking place, but the primary responsibility, is of the people especially the members of the board of directors and the top management.
23. Another important aspect is to realise that ultimately the spirit of corporate governance is more important than the form. Substance is more important than style. Values are the essence of corporate governance and these will have to be clearly articulated and systems and procedures devised, so that these values are practiced.

24. We then come to a common moral problem in running enterprises. One can have practices which are legal but which are unethical. In fact, many a time, tax planning exercises may border on the fine razor's edge between the strictly legal and the patently unethical. A clear understanding of the fundamental values which govern corporate governance and their explicit articulation in a proper code backed by well established structures and traditions like the ethics committee and audit committee may be the best insurance for good corporate governance under the circumstances.
25. Corporate governance and ethical behavior have a number of advantages. Firstly, they help to build good brand image for the company. Once there is a brand image, there is greater loyalty, once there is greater loyalty, there is greater commitment to the employees, and when there is a commitment to employees, the employees will become more creative. In the current competitive environment creativity is vital to get a competitive edge.

26. 10 Essential Governance Principles

A company should:

1. Lay solid foundations for management and oversight

- Recognize and publish the respective roles and responsibilities of board and management.

2. Structure the board to add value

- Have a board of an effective composition size and commitment to adequately discharge its responsibilities and duties.

3. Promote ethical and responsible decision-making

- Actively promote ethical and responsible decision-making.

4. Safeguard integrity in financial reporting

- Have a structure to independently verify and safeguard the integrity of the company's financial reporting.

5. Make timely and balanced disclosure

- Promote timely and balanced disclosure of all material matters concerning the company.

6. Respect the rights of shareholders

- Respect the rights of shareholders and facilitate the effective exercise of those rights.

7. Recognize and manage risk

- Establish a sound system of risk oversight and management and internal control.

8. Encourage enhanced performance

- Fairly review and actively encourage enhanced board and management effectiveness.

9. Remunerate fairly and responsibly

- Ensure that the level and composition of remuneration is sufficient and reasonable and that its relationship to corporate and individual performance is defined.

10 Recognise the legitimate interests of stakeholders

- Recognise legal and other obligations to all legitimate stakeholders.

11 Corporate Governance Rating be made mandatory for listed companies.

27. Openness integrity and accountability are the key elements of Corporate Governance for any corporate entity. These factors assume greater importance in case of Public Sector Banks. It is, therefore, necessary that the Board of Directors, external auditors and supervisor is of bank strive to achieve greater degree of openness, transparency, integrity and accountability in the working of the institution.
28. Banks deal in trust. If trust is in suspicion, damaged lost, the resulting financial loss cannot measure the true risk. Trust being the foundation of banking the discussion over applicability of good governance has really been a non-issue. Good governance and practices are synonymous to banking, banks and bankers. The essence of Corporate Governance is a framework of effective accountability to all stakeholders. Corporate Governance is an instrument for benefiting all stakeholders of a corporate entity. In its widest sense, Corporate Governance is almost akin to a trusteeship. It is about creating an outperforming organization, which leads to increasing customer satisfaction and shareholder value.
29. A code for corporate governance for public sector banks in India could be in the form of a set of prescriptions and proscriptions for the key decision makers of a bank-I its Chairman, Executive and non-Executive Directors, institutional investors and external auditors. Such a code, it is believed, would enable the Boards of the banks to resolve conflict of interests between shareholders, customers, employees and other stakeholders. An informed debate on the issue of contemporary banking in the board rooms would help develop the vision to imagine crises and the will to act pre-emptively.
30. In a deregulated milieu, the Public Sector Banks are bound to demand, and rightly so, greater functional autonomy for flexibility in decision making. Such autonomy, however, needs to be accompanied by greater accountability on the part of their Boards to the stakeholders. A Code of Corporate Governance could be an effective instrument for achieving this goal.
31. The Reserve Bank of India has set up various working groups to evaluate its existing corporate governance norms for banks. The Khan working Group Report, though it did not deal with corporate governance per se, recommended full operational autonomy and flexibility to the management and boards of banks. The Narasimham Committee I recommended a gradual progress towards BIS norms and suggested the ending of the dual control over the sector by the

RBI and the Ministry of Finance. The Narasimham Committee II (1998) recommended reducing government control and strengthening of internal controls. Additionally, Dr. Patil Advisory Group and Varma Group have made recommendations on international best practices of Corporate Governance for banking companies.

32. The report of the Consultative Group of Directors of Banks/Financial Institutions—chaired by A.S. Ganguly—has tackled the issues of ethics, transparency and corporate governance. It has focused on more fundamental issues like the supervisory role of boards of banks and financial institutions and functioning of the boards vis-à-vis compliance, transparency, disclosures, audit committees etc. A governance framework must include effective systems of Control and Accountability, and above all responsible attitudes on the part of those handling public money. It is important that the drive to provide improved services at reduced costs should be maintained and that this drive should not be stifled. At such time it is even more essential to maintain honesty in the spending of public money and to ensure that the traditional public sector values are not neglected in the effort to maximise economy and efficiency.
33. Ethics in managing an organization are vital for long term survival. It is defined as disciplined dealing with what is good and what is bad and what are moral duties and obligations. As far as business ethics are concerned, a minimum code of ethics has to be practiced in competition, public relations and social responsibilities. Corporate Governance encourages ethical standards and sound business practices.
34. Corporate governance extends beyond corporate law. Its objective is not mere fulfillment of legal requirements but ensuring commitment on managing transparently for maximizing shareholder values. As competition increases, technology pronounces the deal of distance and speeds up communication, environment also changes. In this dynamic environment the systems of Corporate Governance also need to evolve, upgrade in time with the rapidly changing economic and industrial climate of the country.
35. Finally the key lesson for us to learn are that Regulations and Policies are only one part of improving governance. Existence of a comprehensive system alone cannot guarantee ethical pursuit of shareholder's interest by Directors, offices and employees. Quality of governance depends upon competence and integrity of Directors, who have to diligently oversee the management while adhering to unpeachable ethical standards. Strengthened systems and enhanced transparency can only further the ability. Transparency about a company's governance process is critical. Implementing Corporate Governance structures are Important but instilling the right culture-work culture is Most Essential.
36. Corporate Governance in the Public Sector cannot be avoided and for this reason it must be embraced. But Corporate Governance should be embraced because it

has much to offer to the Public Sector. Good Corporate Governance, Good Government and Good Business go hand in hand.

--Sd/--
(Ranjana Kumar)
Vigilance Commissioner

**F.No. 007/MISC/Legal/04(Pt.)
Government of India
Central Vigilance Commission**

Satarkta Bhawan, Block-A
GPO complex, INA
New Delhi-110023
Dated 1st November,2007

Circular No.39/11/07

Subject: Criteria to be followed while examining the lapses of authorities exercising quasi-judicial powers in accordance with the criteria laid down by the Hon'ble Supreme Court.

The Commission has observed that certain departments, while approaching the Commission for advice in respect of alleged/perceived lapses of the officials exercising quasi-judicial powers, do not follow an uniform approach in examining such lapses. In certain cases, it is routinely defended that the official had exercised his quasi-judicial powers and no disciplinary proceedings were warranted. In certain other cases, for similar lapses, disciplinary proceedings were proposed alleging that the official had shown recklessness or acted negligently and lacked devotion to duty. The commission is of the view that there should be and uniform approach in examining such cases and it is important not to create an impression that the department was following a policy in targeting only few officials exercising such powers.

It is observed that the Hon'ble Supreme Court had laid down the criteria in K.K. Dhawan's case which, however, were being ignored and the officials were being defended on the basis of the subsequent Supreme Court judgment in the case of Z.B. Nagarkar Vs. Union of India. The Hon'ble Supreme Court in its judgment in the case of Union of India Vs. Duli Chand has held that the decision in the Z.B. Nagarkar's case did not represent the law correctly and decided that the decision in the K.K.Dhawan's case (decided earlier by a larger bench of the Supreme Court) would prevail. The judgment in K.K.Dhawan's case, had laid down the following criteria:

- (i) Where the officer had acted in a manner as would reflect on his reputation for integrity or good faith or devotion to duty.
- (ii) if there is prima facie material to show recklessness or misconduct in the discharge of his duty;
- (iii) if he has acted in a manner which is unbecoming of a Government Servant;
- (iv) If he had acted negligently or that he omitted the prescribed conditions which are essential for the exercise of the statutory powers;
- (v) if he had acted in order to unduly favour a party;

- (vi) if he had actuated by corrupt motive, however, small the bribe may be because Lork Coke said long ago "though the bribe may be small, yet fault is great."

The Commission has therefore, decided that the CVOs, while sending the case to the Commission for advice against the lapses of officials exercising quasi-judicial powers, should examine critically whether any of the above criteria listed, was attracted or not. In either case, detailed justification should be given in arriving at the conclusion as to how none of the criteria was attracted, or how any of them was attracted.

--Sd/--
(Vineet Mathur)
Deputy Secretary

To

All
Chief Vigilance Officers.

No.005/VGL/031
Government of India
Central Vigilance Commission

Satarkta Bhawan, Block 'A',
GPO Complex, INA,
New Delhi- 110 023

Dated 23November 2007

Office Order No. 40/11/07.

Sub:- Reporting of cases in the monthly report of the CVOs, where sanction for prosecution is to be granted by the competent authority.

The Hon'ble Supreme Court in Vineet Narain Vs Union of India case had directed that "time limit of three months for grant of sanction for prosecution must be strictly adhered to. However, additional time of one month may be allowed where consultation is required with the Attorney General (AG) or any Law Officer in the AG's office". It is observed that the time limit set by the Supreme Court is not being adhered to by the organizations concerned in many a cases.

2. The Commission had decided to modify para 4 of the monthly report and para 8 of the Annual Report to be submitted by the CVOs to the Commission to enable monitoring of delay in grant of sanction for prosecution. Copies of the modified format of para 4 of the Monthly Report and para 8 of Annual Report are enclosed. The complete and modified formats of the Monthly Report and Annual Report are available on the Commission's web-site, i.e., www.cvc.nic.in in a downloadable forms.

3. All CVOs are directed to forward the data in the revised formats and the details pertaining to officers/officials of all category against whom sanction for prosecution is pending beyond the specified time limit may be attached along with the monthly/annual report as a separate annexure.

--Sd/--
(Vineet Mathur)
Deputy Secretary

All Chief Vigilance Officers

Monthly Report

Details regarding request for Prosecution sanctions received and disposed

Category	Opening Balance	Received during the month	Total	Granted Sanction	Sanction Refused	Balance	Age wise pendency (Months)	
							<3	>3*
Gr-A								
Gr-B								
Gr-C								
Gr-D								

* (details of cases pending for prosecution sanction beyond 3 months to be shown in annexure)

Sl. No.	Name & Designation of officer	Date of recommendation by Investigating Agency	Reason for pendency

Annual Report

Details regarding request for Prosecution sanctions received and disposed

Category	Opening Balance	Received during the month	Total	Granted Sanction	Sanction Refused	Balance	Age wise pendency (Months)	
							<3	>3*
Gr-A								
Gr-B								
Gr-C								
Gr-D								

* (details of cases pending for prosecution sanction beyond 3 months to be shown in annexure)

Sl. No.	Name & Designation of officer	Date of recommendation by Investigating Agency	Reason for pendency

No. 0007/VGL/033
Government of India
Central Vigilance Commission

Satarkata Bhavan
Block A, GPO Complex
INA, New Delhi-110023

Dated 4th December 2007

Office Order No. 41/12/07

Sub: Adoption of Integrity Pact in major Government Procurement Activities-regarding.

Ensuring transparency, equity and competitiveness in public procurement has been a major concern of the Central Vigilance Commission and various steps have been taken by it to bring this about. Leveraging technology specially wider use of the web-sites for disseminating information of tenders, tightly defining the pre-qualification criteria and other terms and conditions of the tender are some of the steps recently taken at the instance of the commission in order to bring about greater transparency and competition in the procurement/award of tender.

2. In this context, Integrity Pact, a vigilance tool first promoted by the Transparency International, has been found to be useful. The pact essentially envisages an agreement between the prospective vendors/bidders and the buyer committing the persons/officials of both the parties, not to exercise any corrupt influence on any aspect of the contract. Only those vendors/bidders who have entered into such an integrity Pact with the buyer would be competent to participate in the bidding. In other words, entering into this Pact would be a preliminary qualification. The integrity Pact in respect of a particular contract would be effective from the stage of invitation of bids till the complete execution of the contract.
3. The Integrity Pact envisages a panel of Independent External Monitors (IEMs) approved for the organization. The IEM is to review independently and objectively, whether and to what extent parties have complied with their obligations under the Pact. He has right of access to all project documentation. The Monitor may examine any complaint received by him and submit a report to the Chief Executive of the organization, at the earliest. He may also submit a report directly to the CVO and the Commission, in case of suspicion of serious irregularities attracting the provisions of the PC Act. However, even though a contract may be covered by an Integrity Pact, the Central Vigilance Commission may at its discretion, have any complaint received by it relating to such a contract, investigated.
4. The Commission would recommend the integrity Pact concept and encourage its adoption and implementation in respect of all major procurements of the Govt.

organizations. As it is necessary that the Monitors appointed should be of high integrity and reputation, it has been decided that the commission would approve the names of the persons to be included in the panel. The Government Organizations are, therefore, required to submit a panel of names of eminent persons of high integrity and repute and experience in the relevant field, through their administrative Ministry, for consideration and approval by the Commission as Independent External Monitors. The terms and conditions including the remuneration payable to the Monitors need not be a part of the Integrity Pact and the same could be separately communicated. It has also to be ensured by an appropriate provision in the contract, that the integrity Pact is deemed as part of the contract in order to ensure that the parties are bound by recommendation of the IEMs, in case any complaint relating to the contract, is found substantiated.

5. A copy of the Integrity Pact, which the SAIL got vetted by the Addl. Solicitor General is available on the Commission's web-site i.e www.CVC.nic.in as an attachment to this Office Order in downloadable form, which may be used in original or may be suitably modified in order to meet the individual organization's requirements.

--Sd/--
(Vineet Mathur)
Deputy Secretary

All Secretaries to the Govt of India
All CMDs of PSUs
All CMDs of PSBs
All CVOs

**No.007/VGL/033
Government of India
Central Vigilance Commission**

Satarkta Bhawan, Block-A
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New Delhi-110023

Dated 28th December 2007

Office Order No. 43/12/07

Subject: - Adoption of Integrity Pact in major Government procurement Activities-regarding.

Reference is invited to Commission's office order no. 41/12/2007 circulated vide letter of even no. dated 4/12/2007 on the aforementioned subject.

1. The Commission vide para 4 of the aforementioned office order had directed that the organizations were required to forward a panel of names of the eminent persons of high integrity through their administrative ministries for consideration and approval by the Commission as IEMs.
2. The matter has been reconsidered by the Commission and in order to simplify the procedure and avoid delay, it has been decided that the organizations may forward the panel of names of eminent persons for appointment and consideration as IEMs directly to the Commission for approval.
3. Para 4 of the Commission's circular cited above stands amended to this extent.

--Sd/--
(Vineet Mathur)
Deputy Secretary

All Chief Vigilance officers

No.007/VGL/074
Government of India
Central Vigilance Commission

Satarkata Bhavan
Block A,GPO Complex
INA, New Delhi-110023

Dated 28th Dec, 2007

Circular No: 44/12/07

Sub: - Amendment to CDA Rules of PSUs to enable imposition of penalty on Public Sector Employees after their retirement – reg.

The commission has been seriously concerned that as Public Sector Undertakings (PSUs) are non-pensionable establishments, there is no possibility of imposing any penalty on such deviant employees after their retirement, who might have committed serious lapses while in service, just before their retirement. The gratuity amount also could not be withheld unless the person had been terminated consequent to disciplinary proceedings and the question of terminating an employee or imposing a penalty retrospectively, after retirement is not legally tenable. There was a situation that even disciplinary proceeding could not be continued against them beyond the retirement.

2. The Commission had earlier advised Public Sector Enterprises to make a provision in their CDA Rules to allow continuation of departmental proceedings after retirement of an employee. There is a need to incorporate a suitable provision to enable the imposition of penalty on delinquent employees on conclusion of such departmental proceedings continued beyond the date of their superannuating.
3. It is observed that the Public Sector Banks have incorporated a provision in their CDA Rules for deemed continuation of service for this purpose. The said provision reads as under:
"The officer against whom disciplinary proceedings have been initiated will cease to be in service on the date of superannuating but the disciplinary proceedings will continue as if he was in service until the proceedings are concluded and final order is passed in respect thereof. The concerned officer will not receive any pay and/or allowance after the date of superannuating. He will also not be entitled for the payment of retirement benefits till the proceedings are completed and final order is passed thereon except his own contribution to CPF."
4. The Hon'ble Supreme Court of India has recently upheld the punishment of dismissal on a retired Bank employee on conclusion of departmental proceedings after his retirement, on the basis of the above provision, thus validating its legality. In its judgment dated 18.05.07 in the case of Shri Ramesh Chandra Sharma Vs Punjab National Bank, it has further noted that -

"...it may be true that the question of imposition of dismissal of the delinquent officer from service when he has already reached the age of

superannuating would not ordinarily arise. However, as the consequences of such an order is provided for in the service rule, in our opinion, it would not be correct to contend that imposition of such a punishment would be wholly impermissible in law.”

5. The Supreme Court has further held that: -

“The said Regulation clearly envisages continuation of a disciplinary proceeding despite the officer ceasing to be in service on the date of superannuating. For the said purpose a legal fiction has been created providing that the delinquent officer would be deemed to be in service until the proceedings are concluded and final order is passed thereon. The said Regulation being statutory in nature should be given full effect.”

“the effect of a legal fiction is well-known. When a legal fiction is created under a statute, it must be given its full effect, as has been observed in East End Dwellings Co Ltd, v. Finsbury Borough Council 1951 (2) All E.R. 587 as under...”

6. As the legality of the above provision has been upheld by the Supreme Court, all Public Sector Undertakings are advised to amend their CDA Rules in order to incorporate a similar provision. The receipt of this circular may be acknowledged and action taken to amend the CDA Rules along with a copy of the amended rules, may be sent to the commission by 20.01.2008.

--Sd/--

(Vineet Mathur)
Deputy Secretary

To

1. The Secretary, Department of Personnel & Training
2. The Secretary, Department of Public Enterprises
3. The Secretary, Department of Administrative Reforms & Public Grievances
4. All Secretaries to the Ministries/Departments of the Government of India
5. The Chairman SCOPE
6. All Chief Executives of Public Sector Enterprises
7. All CVOs of Ministers/Departments/PSEs

SECTION-II

SYSTEM IMPROVEMENTS

SECTION 2. Circulars issued by RITES / Vigilance.

S. No.	Subject	Letter No. and Date
2.1	Procedures for confirmation of bank guarantees. :- Send photocopy of the BG together and specimen signatures of authorized signatories with the letter asking for the confirmation.	No.RITES/ACCTS/2007 Dated 19.02.007
2.2	inquiring authority - IO can be appointed another public servant or a retired official of the Company/ other PSU /Govt. /autonomous body (hereinafter called the inquiring authority) to enquire into the truth thereof.	No.PERS/11/D&A R Policy/ 2007 dated 19th April, 2007.
2.3	Discretionary power – Recruitment of Staff :- Non-availability/shortage of staff in a particular specialized field, for posting in remote areas. Candidates appointed on case to case basis should seek appointment through subsequent regular recruitment process.	Dated 01.06.07
2.4	Status of Railway Accommodation during Secondment Abroad System Improvement Reg.- PERs. Deptt.should ensure vacation of railway flat, if further permission retain it has not been granted, by those on deputation proposed to be on secondment abroad.	No.V/R/CO/2007/08/C-374 20 th August, 2007
2.5	System Improvement in Tendering :- Changes/modifications in the PQ Criteria tender condition cannot be done in pre bid meeting. Furthermore if any major change/modification is required in the P.Q criteria or the tender condition, then the re-tendering should be preferably done	No.V/R/CO/2007/06/c-363 24-09-2007
2.6	System Improvement for issuing of Measurement Book:- MB issuing register may be modified; the register should also contain the name, designation and signature of issuing person.	No.V/R/CO/Policy/G-10 24.09.07

No.RITES/ACCTS/2007
Dated 19.02.007

Sub: Procedures for confirmation of bank guarantees

To strengthen the system & procedures, it has been decided by the management that in respect of Bank Guarantees issued in favour of RITES as beneficiary for any purpose, following steps should be taken: -

1. Send photocopy of the BG together with the letter asking for the confirmation from the issuing bank and the Regional Office.
2. Send names along with the specimen signatures of authorized signatories operating RITES bank accounts to the banks issuing the BGs.
3. In case any bank guarantees have to be revoked, cancelled or discharged the authorised officials, in such cases, are authorised signatories of Company's bank accounts.
4. DFOs shall ensure that name and the specimen signatures of such officials are intimated to those banks also who have issued bank guarantees in favour of RITES on behalf of RITES suppliers/contractors/service providers.

Please ensure the compliance.

--Sd/--
(N.Narayanaswamy)
Group General Manager(F)

Addressed to: -

- **All EDs/GGMs/GMs in ROC Gurgaon**
- **All DFOs –CO**
- **GGMs/GMs –RITES Project Offices**
- **GGMs/GMs –RITES Inspection Offices.**

No.PERS/11/D&AR Policy/2007
19th April, 2007.

Office Order No.PP/12/2007

In terms of Central Vigilance Commission, Govt. of India's Office Order No.98/MS/23 dated 1.8.2003 and Board's letter No.2006/V-1/DAR/1/8 dated 12.9.2006 requiring amendment in the service rules to provide appointment of retired officers as Inquiring Authority, Para 25(2) of RITES Conduct, Discipline and Appeal Rules, 1980 stands amended with immediate effect and should be read as under:

"Whenever the disciplinary authority is of the opinion that there are grounds for inquiring into the truth of any imputation of misconduct or misbehavior against an employee, it may itself enquire into, or appoint another public servant or a retired official of the Company/other PSU/Govt/autonomous body (hereinafter called the inquiring authority) to enquire into the truth thereof".

This has the approval of Managing Director.

--Sd/--
(Atul Sud)
Executive Director (CS)

Copy to:

ALL SBU Heads/GGMs/GMs as per mailing list

CS-for ratification by BOD on file enclosed.

Discretionary Powers –Recruitment of Staff

A system improvement on the above subject matter has been implemented wherein it has been decided as below:-

Recruitment under discretionary powers on case to case basis should be an 'EXCEPTION'. This exception may be done only in the following cases:

- Non-availability/shortage of staff in a particular specialized field (e.g. as in the Structural Design , etc.)
- Non-availability of staff for posting in remote areas (like posting in J&K, Andman Nicobar, North East, Naxalite infected area, etc.)
- For urgent and short duration requirements in which the regular selection process will take longer time and expenditure.

Candidates appointed on case to case basis should seek appointment through subsequent regular recruitment process. Those found suitable shall be given the benefit of service in RITES.

Authority: FDM held on 01.06.2007

No.V/R/CO/2007/08/C-374
20th August, 2007

Sub: - Status of Railway Accommodation during Secondment Abroad: System Improvement Reg.

While dealing with the case of unauthorized retention of railway quarter by Mr.A.S.Patil, SE(Drg), CEE©/Central Railway during his deputation period in RITES from 14.10.2000 to 02.10.2003 when he was deputed on secondment to Sharjah, Vigilance, Central Railway has observed that RITES did not ensure vacation of flat by him before allowing him to proceed for secondment to Sharjah. In the LPC submitted to RITES by the Central Railway it was mentioned that Mr.Patil was holding a railway quarter. In spite of this he was permitted to leave for Sharjah without ensuring that he had vacated the railway accommodation. This led to an irregularity on the part of RITES.

Recommendation

In order to prevent any further lapse in the future, it is recommended that: As a pro-active action, PERs. Deptt.should ensure vacation of railway flat, if further permission to retain it has not been granted, by those on deputation proposed to be on secondment abroad.

This is with the approval of CVO.

--Sd/--
AGM/P/Vig.

GGM/P

**BITES Ltd.,
Vigilance Cell
Corporate Office, Gurgaon**

No.V/R/CO/Policy/G-10
24.09.07

Sub: System Improvement for issuing of Measurement Book

During the course of an investigation referred by CBI the M.B. Issue register was checked. During scrutiny of the M.B issuing register it came to notice that there is neither any column for signature of the issuing officer nor for the name of the issuing authority. As the MBs are considered very important account records they are to be maintained very carefully and accurately, as they may have to be produced as evidence in a Court of Law.

It is instructed that the MB issuing register may be modified; the register should also contain the name, designation and signature of issuing person as well as of the receiving officer.

The above instructions may please be got noted from all concerned for compliance.

--Sd/--
(A.K.Saxena)
Chief Vigilance Officer

For:

DGM (Secy)/SS to Chairman, MD, DF, DT & DP
All EDs

All SBU Heads in RITES Bhavan, Gurgaon

GGM(P)/GM(P) – Nagpur, Mumbai, Bhubaneswar, Bangalore, Lucknow, Kolkata & Sipat

GGM(I)/GM(I)/COI – Northern, Western, Eastern, Southern Region, & Bhilai.

No.V/R/CO/2007/06/C-363
24-09-2007

Sub: System Improvement in Tendering

During investigation of a particular case undertaken by the Vigilance Cell an instance has come to the notice that while finalizing the tender, the concerned Division has made various major modifications/changes in the Pre-Qualification criteria (PQ) after pre bid meeting thus restricting the scope for a larger competition.

Any changes/modifications in the PQ Criteria or tender condition cannot be done in pre bid meeting. Furthermore if any major change/modification is required in the P.Q criteria or the tender conditions, then the re-tendering should be preferably done, so as to give equal opportunities to all participating bidders.

The instructions may please be got noted from all concerned for compliance.

--Sd/--
(A.K.Saxena)
Chief Vigilance Officer

For:

DGM(Secy)/SS to Chairman, MD, DF, DT & DP
ED(RI), ED(Expotech), ED (QA), ED(FS), ED(TS), ED(UI),
All SBU Heads in RITES Bhavan, Gurgaon
GGM(P)/GM(P) – Nagpur, Mumbai, Bhubaneswar, Bangalore, Lucknow, Kolkata & Sipat
GGM(I)/GM(I)/COI – Northern, Western, Eastern, Southern Region, & Bhilai.